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An Act To Ensure Reasonable and Equitable Land Use Opportunities near Shorebird, Wading Bird and Waterfowl Habitat

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Resolve 2005, chapter 183 authorized Chapter 335: Significant Wildlife Habitat, a major substantive rule of the Department of Environmental Protection; and

Whereas, the implementation of Chapter 335 has created a significant barrier for many coastal property owners to use their land and has resulted in the potential loss of property value; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §480-BB, as enacted by PL 2005, c. 116, §5, is amended to read:

§ 480-BB. Significant wildlife habitat; major substantive rules

The Department of Inland Fisheries and Wildlife shall adopt rules that define "significant vernal pool habitat," "high and moderate value waterfowl and wading bird habitat" and "shorebird nesting, feeding and staging areas" under section 480-B, subsection 10, paragraph B. The Department of Environmental Protection shall adopt rules regarding the criteria used to determine whether an area is significant vernal pool habitat, high and moderate value waterfowl and wading bird habitat or shorebird nesting, feeding and staging areas under section 480-B, subsection 10, paragraph B. The rules, as applicable, must:

1. Definition of area. Include a definition of the buffer area to be regulated; except that in that definition the department may not establish a building setback requirement that is in excess of:

- A. Seventy-five feet from shorebird feeding and staging areas excluding roosting areas;
- B. One hundred and fifty feet from shorebird roosting areas; or
- C. One hundred feet from the edge of an inland wetland complex that has documented outstanding use by waterfowl or wading birds;

2. Certain landowners not subject to regulation. Provide that a landowner proposing to cause an impact on the buffer area defined for a significant vernal pool habitat is not subject to regulation pursuant to the rule if the significant vernal pool habitat is not on property owned or controlled by that landowner;

3. Department of Environmental Protection must provide written field determination. Require that the Department of Environmental Protection provide a written field determination upon the request of a landowner whose land may be affected by the definitions and criteria adopted in a rule;

4. Department of Environmental Protection may not assess fine in certain cases. Provide that the Department of Environmental Protection may not assess a fine against a landowner who acted in accordance with a written field determination if the fine would be based solely on information in the written field determination; and

5. Process for voluntary identification. Include a process for a landowner to voluntarily identify the landowner's land as a significant vernal pool habitat and to provide the Department of Inland Fisheries and Wildlife the authority to map the significant vernal pool habitat.; and

6. Exemptions. Exempt:

A. Existing building lots. For the purposes of this paragraph, "existing building lot" means a building lot whose boundaries were in existence on September 12, 2006 and were so described in a deed recorded on or before that date; and

B. Activities of a holder of a commercial shellfish license pursuant to Title 12, section 6601 who fishes for clams and activities of a holder of a marine worm digger's license pursuant to Title 12, section 6751.

Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

SUMMARY

This bill provides that the Department of Environmental Protection may not establish building setbacks that are in excess of 75 feet from shorebird feeding and staging areas; 150 feet from shorebird roosting areas; or 100 feet from inland wading bird and waterfowl areas. The bill exempts from department rules existing building lots and activities of clammers and worm diggers.